Wood Tech Services, Inc., d/b/a/American Wood Interiors, Inc. *and* Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 7–CA–36451

February 17, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

Upon a charge filed by the Union on October 11, 1994, and an amended charge filed by the Union on November 4, 1994, the General Counsel of the National Labor Relations Board issued a complaint on November 9, 1994, against Wood Tech Services, Inc., d/b/a American Wood Interiors, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On January 19, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On January 23, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 28, 1994, notified the Respondent that unless an answer were received by December 12, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business at G-3420 S. Dort Highway, Burton, Michigan, has been engaged in the manufacture of commercial cabinets and millwork, and in performing services in the construction industry as a carpentry subcontractor. The Respondent maintains job crews at various construction sites located within the State of Michigan. Based on the 6-month period preceding issuance of the complaint, which period is representative of its operations during all material times, the Respondent in conducting its business operations is projected, during the 12-month period ending December 31, 1994, to perform services valued in excess of $50,000 to customers located within the State of Michigan, each of whom, in turn, perform services for customers located outside the State of Michigan and/or purchased goods and materials valued in excess of $50,000 from points located outside the State of Michigan and caused such goods to be shipped directly to its Michigan facilities and jobsites. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

All full-time and regular part-time production and maintenance employees, yard employees, truckdrivers, operators, work leaders and working foremen employed by the Respondent at or out of its Burton facility; but excluding office employees, professional employees, technical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

Since about January 1994, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and, since January 1994, has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement that is effective by its terms from January 24, 1994, to July 1, 1996. At all times since January 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The 1994–1996 agreement obligates the Respondent to:

a. Make timely and complete monthly contributions on behalf of the unit employees to the Union and/or the fringe benefit funds provided for in the 1994–1996 agreement for various fringe benefits including, inter alia, vacation and holiday, health and welfare, and local pension.

b. Pay unit employees wages in accordance with the wage scale set forth in the 1994–1996 agreement.

c. Deduct union dues from the paychecks of unit employees who have signed checkoff authorizations and remit those moneys to the Union.

Since June 15, 1994, the Respondent has employed unit employees at various jobsites in the State of Michigan and at its Burton facility. Since about June 15, 1994, and continuing to date, the Respondent has failed and refused to make timely contributions to the Union and the fringe benefit funds on behalf of the unit employees, and to remit employee union dues deductions to the Union. Since about July 1994, and continuing to date, the Respondent has failed and refused to pay wages as set forth in the 1994–1996 agreement to certain unit employees. By these actions, the Respondent, since about June 15, 1994, has failed to continue in effect all the terms and conditions of the 1994–1996 agreement described above, without the consent of the Union.

Conclusion of Law

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since about June 15, 1994, to make contractually required contributions to the fringe benefit funds provided for in the 1994–1996 agreement, including, inter alia, vacation and holiday, health and welfare, and local pension, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1] Furthermore, having found that the Respondent violated Section 8(a)(5) and (1) by failing, since about June 15, 1994, to remit to the Union dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld dues to the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, supra. Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing, since about July 1994, to pay unit employees contractual wage rates, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Wood Tech Services, Inc., d/b/a American Wood Interiors, Inc., Burton, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make timely, contractually required contributions to the fringe benefit funds on behalf of the unit employees.

(b) Failing and refusing to remit to the Union dues deducted pursuant to valid dues-checkoff authorizations on behalf of unit employees, as required by the collective-bargaining agreement.

(c) Failing and refusing to pay the contractual wage rates to certain unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all contractually required fringe benefit payments including, inter alia, vacation and holiday, health and welfare, and local pension, that have not been made since June 15, 1994, and make the unit employees whole for any expenses ensuing from the failure to make such payments as set forth in the remedy section of this Decision.

(b) Remit to the Union the deducted dues it withheld since about June 15, 1994, with interest, as set forth in the remedy section of this Decision.

(c) Make the unit employees whole for any loss of earnings attributable to its failure, since about July

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

1994, to pay contractually required wage rates, as set forth in the remedy section of this Decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Burton, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 17, 1995

William B. Gould IV,	Chairman
James M. Stephens,	Member
Margaret A. Browning,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to make timely, contractually required contributions to the fringe benefit funds on behalf of the unit employees.

WE WILL NOT fail or refuse to remit to the Union dues deducted pursuant to valid dues-checkoff authorizations on behalf of unit employees, as required by the collective-bargaining agreement.

WE WILL NOT fail or refuse to pay the contractual wage rates to certain unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all contractually required fringe benefit payments including, inter alia, vacation and holiday, health and welfare, and local pension, that have not been made since June 15, 1994, and make the unit employees whole for any expenses ensuing from the failure to make such payments, with interest.

WE WILL remit to the Union the dues deducted but withheld since about June 15, 1994, with interest.

WE WILL make the unit employees whole for any loss of earnings attributable to our failure, since about July 1994, to pay contractually required wage rates, with interest.

WOOD TECH SERVICES, INC., D/B/A
AMERICAN WOOD INTERIORS, INC.